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difficulty of raising money and to investigate the reasons for those difficulties.²⁵

CONGRESSIONAL POWER TO PUNISH FOR CONTEMPT. — It has been generally conceded that Congress has the power to punish certain contempts, but the courts have never finally determined the limitations on this power. A recent case has raised the question as to whether it extends to examinations preliminary to impeachment proceedings. The good faith of a committee of the House, deliberating on the propriety of preferring articles of impeachment against a United States District Attorney, was bitterly impugned by the accused in an open letter. The House found him guilty of contempt, and issued a warrant for his arrest; in pursuance thereof he was thrown into confinement. He applied for a writ of *habeas corpus*, but the court returned him to custody.¹

Parliament has always had the general power to punish contempts;² this seems to be one of the judicial characteristics that have survived from the days when that body was clearly a court.³ Other English legislative bodies, however, have never exercised such broad authority.⁴ And it is certain that Congress has no such general prerogative;⁵ those who seek to trace this right from analogies to Parliament as it existed at the adoption of the Constitution fail to recognize the fact that Congress was never a judicial body and that the judicial origin of Parliament is the basis of this power. English analogies lead nowhere.⁶

Whatever ability to punish contempts Congress may have must come from constitutional implications.⁷ The Constitution requires that Congress legislate, and impliedly, it must be granted the power to secure itself against disorders or intimidation in its presence.⁸ Just as any other

²⁵ See, for instance, the argument of Mr. Alfred P. Thom before the Newlands Committee, now sitting, to consider future legislation. *HEARINGS BEFORE THE JOINT COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE*, parts I-VII.

¹ United States *ex rel.* Marshall v. Gordon, 235 Fed. 422 (Dist. Ct., S. D., N. Y.).

² Brass Crosby's Case, 3 Wils. 188, 198.

" . . . the competence of the House of Commons to commit for a contempt and breach of privilege cannot be questioned." *Burdett v. Abbot*, 14 East 1, 149, *per* Lord Ellenborough, C. J.

³ It is perfectly clear that Parliament originally was, and to some extent still is, a court. *Cf.* COKE, *FOURTH INSTITUTE*, 23. "All courts, by which I mean to include the two houses of parliament and the courts of Westminster-Hall. . . ." Brass Crosby's Case, *supra*, at p. 204, *per* Blackstone, J.

⁴ *Kielly v. Carson*, 4 Moo. P. C. 63, 88, 92.

⁵ *Kilbourn v. Thompson*, 103 U. S. 168, 197.

⁶ See *Kilbourn v. Thompson*, 103 U. S. 168, 189.

⁷ "Such [powers] as are not conferred by that instrument (the Constitution), either expressly or by fair implication from what is granted, are 'reserved to the States respectively, or to the people.' . . . There is no express power in that instrument conferred on either House of Congress to punish for contempts." *Kilbourn v. Thompson*, 103 U. S. 168, 182, *per* Mr. Justice Miller.

⁸ *Anderson v. Dunn*, 6 Wheat. (U. S.) 204, 228. It is clear that *Kilbourn v. Thompson*, *supra*, does not overrule *Anderson v. Dunn* on this point, which is the true basis of the decision; the later case takes exception to *dicta* that are much more broad in their scope. See 1 STORY, *CONSTITUTION*, 5 ed., § 845 *et seq.*; COOLEY, *CONSTITUTIONAL LIMITATIONS*, 7 ed., 191; CUSHING, *LEGISLATIVE ASSEMBLIES*, 2 ed., § 654. *Cf.* *Burnham v. Morissey*, 80 Mass. 226, 239, where it is said that the power to imprison for contempt is limited to cases where the power is necessarily implied from those constitutional functions and duties, to the proper performance of which it is essential.

legislative body, it can maintain order in its chambers and can resist interruptions; such power is necessary to the very existence of the body, and without it constitutional functions could not be efficiently carried out. The circumstances of the principal case present a different and almost clearer argument for the power. A committee of the House considering an impeachment is like a Grand Jury hearing evidence which may lead to the return of an indictment⁹ — it is a judicial body and it is one provided for by the Constitution. It must surely have the power to call witnesses, and the power is of little avail if these witnesses may contemptuously refuse to respond, or may be influenced and intimidated by outside contempters of the body before whom they are testifying.¹⁰ If the House is to sit in a judicial capacity, it must have the protection that a court has.

But conceding the power of this committee to punish contempts, we are confronted with the further question of whether the publication of this letter was a contempt. The federal courts may punish all contempts in their presence or so near thereto as to obstruct the administration of justice.¹¹ This has been construed to refer to acts remote from the court, but directly tending to interfere with the court in the exercise of its proper functions.¹² The letter in the present case obviously influenced, in one way or another, the members of the committee sitting as judges, and so opened their minds to a non-judicial bias. Furthermore, it must have tended to destroy public confidence in the House, and so to render any decision it might reach more obnoxious to public opinion, a result which, of course, would block the smooth administration of justice. A contempt certainly was committed and the House had jurisdiction to punish it.¹³

⁹ See CUSHING, *LEGISLATIVE ASSEMBLIES*, 2 ed., § 641; cited in *ORDRONAUX, CONSTITUTIONAL LEGISLATION*, 367.

¹⁰ "Where the question of . . . impeachment is before either body acting in its appropriate sphere on that subject, we see no reason to doubt the right to compel attendance of witnesses, and their answer to proper questions, in the same manner and by use of the same means that courts of justice can in like cases." *Kilbourn v. Thompson*, *supra*, at p. 190.

In discharging its functions the House may delegate the duty of investigation to committees, and contempt of the committee is contempt of the House. See *COOLEY, CONSTITUTIONAL LIMITATIONS*, 7 ed., 193.

¹¹ See *U. S. REV. STAT.*, § 725.

¹² *United States v. Toledo Newspaper Co.*, 220 Fed. 458 (affirmed by C. C. A., December, 1916, but not yet reported). " . . . federal authorities are one in applying the principle that the criterion whether a given act is so near the presence of the court as to obstruct the administration of justice is not in the physical propinquity of the occurrence to the court, but abides in the degree of approximation the act attains in affecting the immediate duty before the court; that there may be invidious acts or misbehaviors occurring remote from the physical presence of a sitting court, in place or time or both, yet so direct in their tendency to affect the administration of the court's duties in a pending cause as to be an obstruction thereof, and, consequently, within the statute. It is the quality of the obstruction to the administration of justice that measures the propinquity of the act to the court." *United States v. Toledo Newspaper Co.*, *supra*, at p. 487, *per* Killets, J.

¹³ In a proper case, the process of Congress is probably effective throughout the United States.

"And, as to the distance to which the process might reach, it is very clear that there exists no reason for confining its operation to the limits of the District of Columbia; after passing those limits we know no bounds that can be prescribed to its range but those of the United States. . . . Such are the limits of the legislative powers of that body; and the inhabitant of Louisiana or Maine may as probably charge them with

Accordingly, the propriety of its action will not be reviewed, any more than would the commitment for contempt by any other court of general jurisdiction under similar circumstances.¹⁴

Very probably too, when conducting an inquiry preliminary to legislation or to any other act within their constitutional powers, Congress may punish the refusal of a witness to answer relevant questions.¹⁵ The Constitution intends that the functions of Congress be intelligently carried out, and, accordingly, information must be obtained before all the facts necessary to the determination of the propriety of an act can be before them. To gain such knowledge, third parties must, at times, be questioned, and if they cannot be compelled to answer, the ability to legislate efficiently is tremendously diminished; oftentimes it would be impossible to get vital information. The power to legislate does, then, by necessary implication include the power to examine witnesses and to compel them to respond by contempt proceedings. Congressional power to punish contempt must at least go so far.

VALIDITY OF A STATUTE AS A QUESTION FOR AN ADMINISTRATIVE COMMISSION. — The point that a public service commission is not competent to consider the constitutionality of a statute which it has been directed to enforce has been the occasion for a virtual unanimity of opinion on the part of these administrative bodies and courts far and wide.¹ The question, however, has in each instance been disposed of in summary fashion, although the answer seems by no means correspondingly obvious.

bribery and corruption, or attempt, by letter to induce the commission of either, as the inhabitant of any other section of the Union." *Anderson v. Dunn*, 6 Wheat. (U. S.) 204, 234, *per* Mr. Justice Johnson.

It is to be further noted that in the case under discussion the accused came of his own free will before the committee investigating the alleged contempt, though the warrant of arrest was probably served in New York.

¹⁴ "... authorities . . . show conclusively that the senate of the United States has power to punish for contempts of its authority in cases of which it has jurisdiction; that every court, including the senate and house of representatives, is the sole judge of its own contempts; and that in case of the commitment for contempt in such a case, no other court can have the right to inquire into the correctness or propriety of the commitment; or to discharge the prisoner on *habeas corpus*; or that the warrant of commitment need not set forth the particular facts which constitute the alleged contempt." *Ex parte Nugent*, 18 Fed. Cas. 471, 481, *per* Chief Judge Cranch. See CUSHING, LEGISLATIVE ASSEMBLIES, 2 ed., § 649.

Cf. *Burdett v. Abbot*, 14 East 1, 149, and *Case of Sheriff of Middlesex*, 11 A. & E. 273, 289, where it is stated that if the warrant states that the prisoner was committed for something other than a contempt or which could not be a contempt, then the court will act as justice requires. A general warrant committing for contempt is however held non-reviewable.

¹⁵ See *In re Chapman*, 166 U. S. 661, 671. See COOLEY, CONSTITUTIONAL LIMITATIONS, 7 ed., 193.

¹ *Director of Posts v. Inchausti & Co.*, P. U. R. 1916 E, 849; *Re Marin Municipal Water Dist.*, P. U. R. 1915 C, 433; *Scobey v. Great Northern R. Co.*, P. U. R. 1915 A, 950; *Re Cochise County*, P. U. R. 1915 D, 220; *Re Marysville Light & Water Co.*, P. U. R. 1915 D, 374; *State ex rel. Missouri Southern R. Co. v. Public Service Comm.*, 250 Mo. 704, 727, 168 S. W. 1156. In *Knott v. Southwestern Tel. & Tel. Co.*, P. U. R. 1915 E, 963, 985, the Commission at one point expressly denies its power to decide a question of the constitutionality of a statute, proceeding later, however, to consider such a question.